

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

NORMAN ABBOTT,
DINAH ABBOTT,

Plaintiffs,

v.

Civil Action No. 3:08cv665

SUNTRUST MORTGAGE, INC.,

Defendant.

**SUNTRUST MORTGAGE, INC.'S MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE FILINGS OF PLAINTIFFS AFTER ENTRY OF ORDER
PROHIBITING FURTHER ACTIVITY AND FOR ATTORNEYS' FEES
PURSUANT TO 28 U.S.C. § 1927**

COMES NOW, Defendant SunTrust Mortgage, Inc. ("SunTrust"), by counsel, and in support of its Motion to Strike and for Attorneys' Fees, states as follows.

1. On December 12, 2008, this Court entered an Order that stayed this action and prohibited any further activity until after the Court rules upon SunTrust's Motion to Dismiss.
2. Despite this Order of the Court, *pro se* Plaintiffs have filed several additional documents with the Court and continue to file documents even after acknowledging that the filings are in violation of the Order. See Docket of this case, a copy of which is attached hereto as Exhibit 1; Request for Entry of Default; Memorandum in Support of Request for Entry of Default; Motion for Default Judgment; Motion for Order to Show Cause; Motion for Relief/Remedy Under Federal Rule 8(a)(1)(2)(3) in favor of Plaintiffs; Motion to Receive Judgment in Accordance to Federal Rule of Civil Procedure 58(1)(2); Motion to Disqualify Judge Under Federal Rule 63 and Canons of Judiciary Conduct, at p.1 (acknowledging the Order staying the case and prohibiting further activity); and Motion to Receive Civil Docket Filing of Judgment Under Federal Rule of Civil Procedure 79(c)(3) and 5 U.S.C. § 552(g)(4).

Exhibit 2

3. Plaintiffs' filings were made in violation of this Court's Order of December 12, 2008, and for such reason alone should be stricken absent their obtaining leave to do so. Also, the filings are procedurally improper and without merit even absent this Court's Order of December 12, 2008. Additionally, in some instances the filings contain defamatory and otherwise improper statements about current and former SunTrust employees. For all these reasons, the filings should not be permitted to remain in the public record of this Court.

4. Plaintiffs' baseless and defamatory allegations in their Motion to Show Cause for Just Relief filed on December 22, 2008, include accusations that SunTrust's current and former employees misappropriated unidentified securities from Plaintiffs and otherwise committed crimes. See Motion for Order to Show Cause, Docket Entry No. 22, at pp. 1-2. Those SunTrust employees should not be burdened with the prospect of their names appearing with such criminal allegations in a public record from this point forward.

5. Nor should Plaintiffs generally be permitted to fill the public records of this Court with such baseless, unsupported, and improper accusations, particularly after the Court entered an Order that stayed this case and prohibited further activity. If the filings containing the defamatory allegations were pleadings, such would be subject to removal from the record under Federal Rules of Civil Procedure 12(f), as "redundant, immaterial, impertinent and scandalous." Here the Order of the Court entered on December 12, 2008, provides sufficient authority for removing them from the record.

6. Based on the Order prohibiting further activity, SunTrust filed no responses to the Plaintiffs' numerous subsequent filings. SunTrust did not seek leave to file the present Motion until Plaintiffs' filings: included defamatory allegations against current and former SunTrust employees; acknowledged Plaintiffs' violation of the Order of this Court; and continued without

being withdrawn despite the acknowledged violation of the Order. See Motion for Order to Show Cause, Docket Entry No. 22, at pp. 1-2; Motion to Disqualify Judge Under Federal Rule 63 and Canons of Judiciary Conduct, Docket Entry 25, at p. 1; Motion to Receive Civil Docket Filing of Judgment, Docket Entry 26.

7. Given Plaintiffs' propensity to not respect this Court's Order and continue to file documents with the Court, there exists the likelihood that they will file additional documents in violation of the Court's Order of December 12, 2008.

8. The subject filings of the Plaintiffs violate this Court's stay and prohibition against further activity and have unreasonably and vexatiously multiplied these proceedings, giving rise to a claim under 28 U.S.C. § 1927 for costs, expenses and attorneys' fees. Particularly unreasonable and vexatious are those filings of the Plaintiff made after the Plaintiffs acknowledgement of the Order staying the case and prohibiting further activity. See Motion to Disqualify Judge, Docket Entry 25, at p. 1; Motion to Receive Civil Docket Filing of Judgment, Docket Entry 26.

9. By persistently making these filings in violation of this Court's Order and 28 U.S.C. § 1927, the Plaintiffs have disrespected the authority of this Court and harassed SunTrust. Additionally, Plaintiffs caused SunTrust to incur additional attorneys' fees reviewing the filings and now responding to them with the Motion for Leave and this Motion to Strike and for Attorneys Fees. Accordingly, the Court should award to SunTrust the attorneys fees for such review and Motions in response. See 28 U.S.C. § 1927; Wham v. United States, 458 F. Supp. 147 (D. S.C. 1978) (warning pro se litigant that under 28 U.S.C. § 1927 fees could be awarded against him in the future even in a case where he proceeds *pro se*).

WHEREFORE, SunTrust Mortgage, Inc. requests that the Court enter an Order that: (1) strikes from the record of this case all filings of the Plaintiffs after December 12, 2008 and prior to entry of an Order ruling upon SunTrust's Motion to Dismiss; (2) directs the Clerk to undertake appropriate activity to remove the documents from the record; (3) awards to SunTrust the attorneys fees that it has incurred in preparing the Motion for Leave and this Motion, and in reviewing the filings of the Plaintiffs in violation of the December 12, 2008 Order of the Court; and grants to SunTrust any further relief that the Court may deem appropriate.

Respectfully submitted,

SUNTRUST MORTGAGE, INC.

By Counsel

/s/ Travis A. Sabalewski

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Counsel for SunTrust Mortgage, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2009, a copy of the foregoing was served via first class mail on the following:

Norman Abbott
Dinah Abbott
P.O. Box 50364
Richmond, VA 23250
Pro Se Plaintiffs

/s/ Travis A. Sabalewski

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Counsel for SunTrust Mortgage, Inc.

Exhibit 1

**U.S. District Court
Eastern District of Virginia - (Richmond)
CIVIL DOCKET FOR CASE #: 3:08-cv-00665-REP**

Abbott et al v. Sun Trust Mortgage, Inc.
Assigned to: District Judge Robert E. Payne
Cause: 28:1651 Petition for Writ of Mandamus

Date Filed: 10/14/2008
Jury Demand: None
Nature of Suit: 540 Mandamus & Other
Jurisdiction: Federal Question

Petitioner

Norman Abbott

represented by **Norman Abbott**
P.O. Box 50364
Richmond, VA 23250
PRO SE

Petitioner

Dinah Abbott

represented by **Dinah Abbott**
P.O. Box 50364
Richmond, VA 23250
PRO SE

V.

Respondent

Sun Trust Mortgage, Inc.

represented by **Travis Aaron Sabalewski**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
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10/14/2008	<u>1</u>	PETITION for Writ of Mandamus filed by Norman Abbott and Dinah Abbott against Sun Trust Mortgage, Inc. (Filing fee \$ 350, Receipt Number 346830000873). (Attachments: # <u>1</u> Exhibit A & B, # <u>2</u> Exhibit C, # <u>3</u> Exhibit D, # <u>4</u> Exhibit E, # <u>5</u> Exhibit F, and # <u>6</u> Receipt)(lhin,) (Entered: 10/14/2008)
10/14/2008	<u>2</u>	Summons Issued as to Sun Trust Mortgage, Inc. (lhin,) (Entered: 10/14/2008)
10/15/2008	<u>3</u>	SUMMONS Returned Executed as to Sun Trust Mortgage, Inc. served on 10/15/2008, Answer due 11/4/2008. (lhin,) (Entered: 10/15/2008)
10/28/2008	<u>4</u>	Memorandum filed by Norman Abbott, Dinah Abbott. (cmcc,) (Additional attachment(s) added on 10/31/2008: # <u>1</u> Exhibits) (cmcc,). (Entered: 10/31/2008)
11/04/2008	<u>5</u>	MOTION to Dismiss by Sun Trust Mortgage, Inc.. (Sabalewski, Travis) (Entered: 11/04/2008)
11/04/2008	<u>6</u>	Memorandum in Support re <u>5</u> MOTION to Dismiss filed by Sun Trust Mortgage, Inc.. (Sabalewski, Travis) (Entered: 11/04/2008)
11/04/2008	<u>7</u>	Financial Interest Disclosure Statement (Local Rule 7.1) by Sun Trust Mortgage, Inc.. (Sabalewski, Travis) (Entered: 11/04/2008)
11/04/2008	<u>8</u>	NOTICE of Appearance by Curtis Gilbert Manchester on behalf of Sun Trust Mortgage, Inc. (Manchester, Curtis) (Entered: 11/04/2008)
11/05/2008	<u>9</u>	RESPONSE to Motion ("Motion for Leave of Court in Opposition of Motion to Dismiss") re <u>5</u> MOTION to Dismiss filed by Norman Abbott, Dinah Abbott. (cmcc,) (Entered: 11/10/2008)
11/05/2008	<u>10</u>	MOTION to Compel ("Motion for Leave of Court to Compel Production of Answers to Writ of Mandamus and All Virginia Codes") by Norman Abbott, Dinah Abbott. (Attachments: # <u>1</u> Exhibit)(cmcc,) (Entered: 11/10/2008)
11/06/2008	<u>11</u>	MOTION for Leave of Court ("to Issue a Lawful Writ of Mandamus and an Order for Contempt of Court") by Norman Abbott, Dinah Abbott. (cmcc,) (Entered: 11/10/2008)
11/12/2008	<u>12</u>	Rebuttal Brief re <u>5</u> MOTION to Dismiss filed by Sun Trust Mortgage, Inc.. (Sabalewski, Travis) (Entered: 11/12/2008)
11/12/2008	<u>13</u>	Memorandum in Opposition re <u>10</u> MOTION to Compel, <u>11</u> MOTION for Leave of Court to Issue a Lawful Writ of Mandamus and an Order for Contempt of Court filed by Sun Trust Mortgage, Inc.. (Sabalewski, Travis) (Entered: 11/12/2008)
11/13/2008	<u>14</u>	REPLY to Response to Motion re <u>10</u> MOTION to Compel, <u>11</u> Motion for Leave of Court, filed by Norman Abbott, Dinah Abbott. (cmcc,) (Entered: 11/14/2008)
11/17/2008	<u>15</u>	ORDER re <u>5</u> MOTION to Dismiss filed by Defendant Sun Trust Mortgage, Inc. which is DENIED IN PART; dft's motion to dismiss based on Fed. R. Civ. P. 2, 3, and 81(b) is DENIED; the Court should construe an inappropriately-filed petition for a writ of mandamus from a pro se litigant as a properly-filed complaint seeking the same or similar substantive relief; the Court will

		continue to consider the dft's motion to dismiss based on Fed.R.Civ.P. 12(b)(6). ORDERED that the dft shall file a supplemental brief in support of its Motion to Dismiss setting forth the relationship between the parties, if any, and specific grounds in support of its contention that the pltfs' complaint should be dismissed under Fed. R. Civ. P. 12(b)(6); brief shall be filed by December 2, 2008, pltfs shall file their response by December 12, 2008, dft shall file any reply by December 16, 2008. Signed by District Judge Robert E. Payne on 11/17/2008. Copies to counsel and pro se plaintiffs.(cmcc,) (Entered: 11/17/2008)
12/02/2008	<u>16</u>	Brief in Support to <u>5</u> MOTION to Dismiss filed by Sun Trust Mortgage, Inc.. (Attachments: # <u>1</u> Exhibit 1 Trustee's Deed dated 07/17/08, # <u>2</u> Exhibit 2 Docket of Bankruptcy Petition 07-33454, # <u>3</u> Exhibit 3 Bankruptcy Order dated 01/11/08, # <u>4</u> Exhibit 4 Final Order & Memo Opinion 03/25/08, # <u>5</u> Exhibit 5 Docket Report Abbott v. Huennkens, et al., # <u>6</u> Exhibit 6 Order dated 02/13/08, # <u>7</u> Exhibit 7 IRS 2007 1099 OID form, # <u>8</u> Exhibit 8 IRS Form 1040V) (Sabalewski, Travis) (Entered: 12/02/2008)
12/12/2008	<u>17</u>	ORDER that this action is STAYED until after the <u>5</u> Motion to Dismiss is decided; and no further activity shall be had herein until then. Signed by District Judge Robert E. Payne on 12/12/2008. (walk,) (Entered: 12/12/2008)
12/12/2008	<u>18</u>	"Application for Writ of Assistance" by Norman Abbott, Dinah Abbott. (cmcc,) (Entered: 12/17/2008)
12/19/2008	<u>19</u>	Request for Entry of Default as to Sun Trust Mortgage, Inc. by Norman Abbott, Dinah Abbott. (cmcc,) (Entered: 12/22/2008)
12/19/2008	<u>20</u>	MOTION for Default Judgment as to Sun Trust Mortgage, Inc. by Norman Abbott, Dinah Abbott. (Notarized Affidavit attached) (cmcc,) (Entered: 12/22/2008)
12/19/2008	<u>21</u>	Memorandum in Support re <u>19</u> Request for Entry of Default, <u>20</u> MOTION for Default Judgment, filed by Norman Abbott, Dinah Abbott. (Attachments: # <u>1</u> Exhibit - Part I, # <u>2</u> Exhibit - Part II)(cmcc,) (Entered: 12/22/2008)
12/22/2008	<u>22</u>	MOTION for Order to Show Cause by Norman Abbott, Dinah Abbott. (cmcc,) (Entered: 12/22/2008)
12/30/2008	<u>23</u>	MOTION for Relief/Remedy Under Federal Rule 8(a)(1)(2)(3) in Favor of Plaintiffs by Norman Abbott, Dinah Abbott. (cmcc,) (Entered: 12/31/2008)
12/31/2008	<u>24</u>	MOTION to Receive Judgment in Accordance to Federal Rule of Civil Procedure 58(1)(2) by Norman Abbott, Dinah Abbott. (cmcc,) (Entered: 12/31/2008)
01/02/2009	<u>25</u>	MOTION "to Disqualify Judge Under Federal Rule 63 and Cannons of Judiciary Conduct for the Commonwealth of Virginia" by Norman Abbott, Dinah Abbott. (cmcc,) (Entered: 01/02/2009)
01/05/2009	<u>26</u>	MOTION "to Receive Civil Docket Filing of Judgment Under Federal Rule of Civil Procedure 79(c)(3) and 5 USC 552 (g)(4)" by Norman Abbott, Dinah Abbott. (cmcc,) (Entered: 01/05/2009)

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